

# Memo

Indiana  
Board of  
Tax  
Review



**To:** All Petitioners and Respondents  
**From:** The Indiana Board of Tax Review  
**Date:** April 2004  
**Re:** Evidence Exchange Rules

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The purpose of this memorandum is to clarify the obligations of the parties under the Indiana Board of Tax Review (IBTR) rules 52 IAC 2-7-1, 52 IAC 3-1-5 and LSA Doc. #4-108(E). 52 IAC 2-7-1 governs standard (non-small claims) cases, 52 IAC 3-1-5 governs small claims cases, and LSA Doc. #04-108(E) governs Lake County 139L Petitions.

You will note from the emphasis added to the rule provisions set out on page two of this memo that a significant difference exists between the language of the rule applicable to ‘Standard’ cases and those applicable to the ‘Small Claims’ and ‘Lake 139L Petitions’. The Standard rule states that the parties “must provide” the referenced documents to the other parties, while the small claims and Lake Co. rules state the parties shall “make [the referenced documents] available” to all other parties.

Obviously, making something available is not the same as an outright, affirmative obligation to exchange documents. Consequently, the obligation in small claims and Lake County 139L petitions is for the party to give the referenced documents to the other party if the other party has requested the referenced documents.

**This, in simple and practical terms, means that unless a party asked for the documents, and the other party refused to make copies available, the requesting party would have no basis for objecting to the documents being submitted at the hearing.**

Please keep these provisions in mind as you consider your obligations as parties in an IBTR proceeding.

## RULE APPLICABLE TO **STANDARD CASES**

52 IAC 2-7-1 (emphasis added):

\* \* \*

(b) A party to the appeal **must provide** to the other parties:

(1) copies of documentary evidence or summaries of statements of testimonial evidence at least five (5) business days prior to the hearing; and

(2) a list of witnesses and exhibits to be introduced at the hearing at least fifteen (15) business days prior to the hearing.

\* \* \*

(f) Failure to comply with subsection (b) may serve as grounds to exclude the evidence or testimony at issue.

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## RULE APPLICABLE TO **SMALL CLAIMS**

52 IAC 3-1-5 (emphasis added):

\* \* \*

(f) The parties shall **make available** to all other parties copies of any documentary evidence and the names and addresses of all witnesses intended to be presented at the hearing at least five (5) days before the day of a small claims hearing.

\* \* \*

(h) Failure to comply with subsection (f) may serve as grounds to exclude evidence or testimony that has not been timely provided.

## RULE APPLICABLE TO **LAKE CO. 139L PETITIONS**

LSA Doc. #04-108 (E) SECTION 10 (emphasis added):

\* \* \*

(d) The parties shall **make available** to all other parties copies of any documentary evidence and the names and addresses of all witnesses intended to be presented at the hearing at least five (5) days before the hearing. At the commencement of the hearing, the parties shall make available to the presiding special master a copy of all documentary evidence provided to the other parties.

(e) Failure to comply with subsection (d) may serve as grounds to exclude the evidence.

**NOTE: You are strongly advised to review the full context of these rules in order to fully understand their proper application.**